

**MINUTES OF
MISSISSIPPI TORT CLAIMS BOARD
THURSDAY, JANUARY 12, 2012**

The Mississippi Tort Claims Board (Board) meeting was held at 2:00 p.m. in Room 117, Woolfolk State Office Building; 501 North West Street; Jackson, Mississippi.

The following members were present, constituting a quorum:

Lanford, Mike; Acting Chairman; Deputy Attorney General, Representing Attorney
General Jim Hood
Chaney, Mike; Commissioner, MS Insurance Department
Fisher, Trudy; Executive Director, MS Department of Environmental Quality
Fitch, Lynn; Treasurer, State Treasury

Also present were:

Donaldson, Bruce; Tort Claims Board
Jackson, Laura; Cannon Cochran Management Services, Inc.
Jackson, Laura; State Treasury
Kelly, Trina; Tort Claims Board
Logan, Jim; Tort Claims Board
McElroy, Lea Ann; Tort Claims Board
Washington, Diedra; Tort Claims Board
Wilson, Jeff; Trinity Capital
Woodcock, J. D. "Woody"; Attorney General's Office
Wray, Rita; Department of Finance and Administration
Younger, Jim; Department of Public Safety

Motion was made by Mrs. Fisher to approve the minutes of the November 10, 2011, meeting as amended to reflect attendance of Insurance Commissioner Mike Chaney. Commissioner Chaney seconded the motion, which passed unanimously.

There was no Old Business.

Under New Business, Mrs. McElroy welcomed State Treasurer Lynn Fitch and Deputy State Treasurer Laura Jackson.

Mr. Jim Logan presented the financial report through December 31, 2011. He reported assessment receipts of \$3,471,354 and total expenditures of \$2,544,337. Mr. Logan advised that the fund has \$14.1 million cash on hand, \$6.7 million reserves, and \$7.4 million unencumbered cash. Claim payments to-date total \$738,710; legal expenses total \$534,378; other claim-related expenses total \$15,674. The average claim paid is \$1,675 with an average reserve of \$10,239. He reviewed the Budget Comparison Report and noted that the contractual budget expenditures

are only 16.44% because funds must be budgeted to encumber the legal contracts with our defense attorneys, however, actual legal expenses remain lower than the total contract value.

Mr. Jeff Wilson reviewed the December 2011 portfolio highlights. The total portfolio of \$8.9 million earned just over 1% through the first half of the fiscal year. Mr. Wilson is projecting a rate of return of 2.25 for the year.

In Mr. Milner's absence, Mrs. McElroy noted his report in the Board meeting materials, and briefly shared his work for the Governor's Inauguration.

There was no Attorney General's Report. Commissioner Chaney inquired about monitoring the attorneys on the approved Attorney Register to ensure consistent interpretation. At the present time, this is handled through the combined efforts of Mr. Lanford, Mr. Woodcock, and Mr. Donaldson.

Mrs. McElroy presented a list of 47 political subdivisions with the recommendation that all be approved for renewal of Certificates of Coverage. Mrs. Fitch made a motion to approve the list and Mrs. Fisher seconded the motion, which passed by unanimous vote.

Mr. Donaldson presented a report and settlement recommendation in the case of Doris Kenny Ware v. Mississippi Department of Transportation. The facts of the case were presented along with a recommendation to settle the case for \$225,000 from defense attorney Christopher G. Henderson of the Simmons Law Group. Commissioner Chaney inquired about a property claim for the claimant's 18-wheel truck. Mr. Donaldson reported that Lloyds of London covered the truck for the trucking company. We made an offer for 50% of the damages, which was rejected. The statute has now run for any property claim. Mrs. Fisher inquired about the claimant's injuries and actual medical expenses compared to the settlement offer. Mr. Donaldson noted that the claimant has not returned to work and has filed for Social Security Disability. His lost earning capacity has been considered in the settlement. Commissioner Chaney made a motion to approve the settlement offer and Mrs. Fisher seconded the motion. The motion passed by unanimous vote.

There being no further business to come before the Board, the meeting was adjourned.

J. KIRKHAM POVALL, CHAIRMAN

MIKE CHANEY, BOARD MEMBER

TRUDY FISHER, BOARD MEMBER

LYNN FITCH, BOARD MEMBER

JIM HOOD, BOARD MEMBER

ALBERT SANTA CRUZ, BOARD MEMBER

KEVIN J. UPCHURCH, BOARD MEMBER

Mississippi Tort Claims Board
Thursday, January 12, 2012 – 2:00 P.M.

AGENDA

- I.** Approval of Minutes
 A. November 10, 2011

- II.** Old Business

- III.** New Business

- IV.** Financial Reports
 A. Financial Report – Jim Logan
 B. Investment Report – Jeff Wilson

- V.** Loss Control – Steve Milner

- VI.** Attorney General's Report – Lea Ann McElroy

- VII.** Certificates of Coverage – Lea Ann McElroy

- VIII.** Claims Report – Bruce Donaldson
 A. Ware v. MDOT

- IX.** Adjournment

Next meeting date and time: March 8, 2012 – 1:30 P.M.
Meeting location: Suite 138, Conference Center North, Woolfolk Building, Jackson, MS

**MINUTES OF
MISSISSIPPI TORT CLAIMS BOARD
THURSDAY, NOVEMBER 10, 2011**

The Mississippi Tort Claims Board (Board) meeting was held at 1:30 p.m. in Room 138, Woolfolk State Office Building; 501 North West Street; Jackson, Mississippi.

The following members were present, constituting a quorum:

Lanford, Mike; Acting Chairman; Deputy Attorney General, Representing Attorney General Jim Hood
Kelsey, Christina; Representing Commissioner Mike Chaney, MS Insurance Department
Upchurch, Kevin; Executive Director, MS Department of Finance and Administration
Welch, Liz; Deputy Treasurer, Representing Treasurer Tate Reeves

Also present were:

Donaldson, Bruce; Tort Claims Board
Jackson, Laura; Cannon Cochran Management Services, Inc.
Kelly, Trina; Tort Claims Board
Logan, Jim; Tort Claims Board
McElroy, Lea Ann; Tort Claims Board
Milner, Steve; Tort Claims Board
Thornton, Tenny; Tort Claims Board
Wilson, Jeff; Trinity Capital
Woodcock, J. D. "Woody"; Attorney General's Office
Wray, Rita; Department of Finance and Administration
Younger, Jim; Department of Public Safety

Motion was made by Mr. Upchurch to approve the minutes of the September 8, 2011, meeting, with the second from Mrs. Welch. The motion passed unanimously.

There was no Old Business.

There was no New Business.

Mr. Jim Logan presented the financial report through October 31, 2011. He reported assessment receipts of \$1,780,216 and total expenditures of \$1,568,473. Mr. Logan advised that the fund has \$13.2 million cash on hand, \$7.3 million reserves, and \$5.9 million unencumbered cash. Claim payments to-date total \$302,304; legal expenses total \$375,698; other claim-related expenses total \$14,384. The average claim paid is \$998 with an average reserve of \$9,511.

Mr. Jeff Wilson reviewed the October 2011 portfolio highlights. The total portfolio of \$7.4 million earned just under 1% through the first four months of the fiscal year. Mr. Wilson is projecting a rate of return of 2.25-2.40% for the year.

Mr. Steve Milner noted his report in the Board meeting materials, and discussed his work in October with the 152nd Mississippi State Fair. Record attendance of over 694,000 with no known claims reflects the outstanding collaborative effort between the Fair Commission, State Fire Marshals, and the Tort Claims Board.

Mrs. McElroy presented eleven (11) attorneys for inclusion in the approved Attorney Register: Stephen J. Carmody, Cheri D. Green, and Julie Jarrell Gresham with the Brunini Firm; Bonnie Bridgers Smith with Gibbs Whitwell, PLLC; John D. Brady with Mitchell, McNutt & Sams; Scott Ellzey, Michael F. Held, Thear J. Lemoine, Kyle S. Moran, Heather Edwards Murphy, and James G. Wyly with Phelps Dunbar, LLP. All meet the eligibility requirements of the Board and staff recommends approval. Mrs. Welch moved to approve and Mr. Upchurch seconded. The motion passed unanimously.

Mrs. McElroy presented a list of 108 political subdivisions with the recommendation that all be approved for renewal of Certificates of Coverage. Mrs. Welch mad a motion to approve the list and Mr. Upchurch seconded the motion, which passed by unanimous vote.

There was no claims report.

There being no further business to come before the Board, the meeting was adjourned.

J. KIRKHAM POVALL, CHAIRMAN

MIKE CHANEY, BOARD MEMBER

TRUDY FISHER, BOARD MEMBER

JIM HOOD, BOARD MEMBER

TATE REEVES, BOARD MEMBER

ALBERT SANTA CRUZ, BOARD MEMBER

KEVIN J. UPCHURCH, BOARD MEMBER

MISSISSIPPI TORT CLAIMS BOARD
Combined Financial Report - Fiscal Year 2012
Fund 3080

-----CASH FLOW ANALYSIS-----

	November	December	Year-To-Date
REVENUE:			
Assessments Received	315,722.63	1,375,415.00	3,471,353.90
Interest	4,733.66	4,112.03	29,449.94
Investment Interest	6,772.09	12,913.02	84,211.54
Workers Comp Service Fees	7,593.61	0.00	7,593.61
Sale of Scrap	125.00	0.00	875.92
Prior Year Cancelled Warrant	349.00	0.00	699.00
Transfer In Funds	250,000.00	0.00	750,000.00
Total Revenue	\$ 585,295.99	\$ 1,392,440.05	\$ 4,344,183.91
EXPENSES:			
Claim Losses - TCB and TPA	384,251.27	52,155.29	738,710.09
Legal Expenses - TCB and TPA	103,707.19	54,972.37	534,378.04
Other Expenses - TCB and TPA	635.01	655.00	15,673.81
Administrative Expenses Paid	68,900.46	60,587.33	505,575.07
Transfer of Funds - Out	250,000.00	0.00	750,000.00
Total Expenses	\$ 807,493.93	\$ 168,369.99	\$ 2,544,337.01
CASH ON HAND:			
Beginning Balance	\$ 13,191,610.94	\$ 12,969,413.00	
Revenue	585,295.99	1,392,440.05	
Expenses	(807,493.93)	(168,369.99)	
Adjustments	0.00	0.00	
Total Cash	\$ 12,969,413.00	\$ 14,193,483.06	
Per Treasury Fund 3080	\$ 12,669,885.69	\$ 13,946,557.42	
Per Trustmark Bank Balance	299,527.31	246,925.64	
Sub-Total Cash By Accounts	\$ 12,969,413.00	\$ 14,193,483.06	
Less Reserves	\$ 7,240,039.02	\$ 6,747,795.44	
Unencumbered Cash Available	\$ 5,729,373.98	\$ 7,445,687.62	

-----CLAIMS/RESERVES DETAIL (Year-To-Date)----

	Tort Board	Mgt. Services	TOTAL
Claims - Payments	\$ 2,723.51	\$ 735,986.58	\$ 738,710.09
Claims - Legal Expenses	534,378.04	-	534,378.04
Claims - Other Expenses	-	15,673.81	15,673.81
Total Paid Out to Date	\$ 537,101.55	\$ 751,660.39	\$ 1,288,761.94
OUTSTANDING RESERVES	104,910.02	6,642,885.42	6,747,795.44
Total Claims & Reserves	\$ 642,011.57	\$ 7,394,545.81	8,036,557.38
Number of Claims Created	38	549	587
Number of Claims Paid	11	430	441
Total Open Claims	42	617	659
AVG. CLAIM \$ / # CLAIMS PAID	\$247.59	\$1,711.60	\$ 1,675.08
AVG. RESERVE / OPEN CLAIMS	\$2,497.86	\$10,766.43	\$ 10,239.45

NOTE: Information represents combined operations for Treasury Fund 3080 and the Trustmark account (utilized by CCMSI).

MISSISSIPPI TORT CLAIMS BOARD

Budget Comparison Report

Treasury Fund 3080

Fiscal Year 2012

Expenses:	Total Budget	November 2011	December 2011	Year To Date Expenditures	Ending Balance	Percent Expended
A1-Salaries	\$ 523,239.00	\$ 43,055.11	\$ 43,054.49	\$ 259,345.04	\$ 263,893.96	49.57%
A2-Travel	10,000.00	0.00	0.00	3,425.53	6,574.47	34.26%
B-Contractual	4,703,963.00	128,930.82	72,152.67	773,222.93	3,930,740.07	16.44%
C-Commodities	6,800.00	603.27	333.39	3,853.76	2,946.24	56.67%
D2-Capital Outlay	3,000.00	0.00	0.00	0.00	3,000.00	0.00%
E-Subsidies	4,015,818.00	250,000.00	0.00	752,723.51	3,263,094.49	18.74%
SUBTOTAL	<u>\$ 9,262,820.00</u>	<u>\$ 422,589.20</u>	<u>\$ 115,540.55</u>	<u>\$ 1,792,570.77</u>	<u>\$ 7,470,249.23</u>	<u>19.35%</u>
TPA Expended		<u>384,904.73</u>	<u>52,829.44</u>	<u>751,766.24</u>		
TOTAL Expended		<u>\$ 807,493.93</u>	<u>\$ 168,369.99</u>	<u>\$ 2,544,337.01</u>		

TRINITY

TRINITY CAPITAL INVESTORS

January 3, 2012

Mr. Jim Logan
Mississippi Tort Claims Board
P O Box 267
Jackson, MS 39205-0267

Re: December 2011 Portfolio Highlights

Total Portfolio		\$8,920,203 + accrued
Fiscal YTD Internal Rate of Return		1.145%
Weighted Average Life		Approximately 1.9 years
YTD Interest Earned	Fiscal Year	84212
Accrued Interest		20358

P.O. Box 2840 Ridgeland, MS 39158
Telephone 601-956-3511
Fax 601-956-3513

Security Inventory
Booking Report
December 2011
MISSISSIPPI TORT CLAIMS FUND

Security Group	Type	Par Value	Book Value/ Cost
AGEN	FNMA	5,000,000	4,994,625.00
	AID	250,000	268,427.50
CMO	GNMA	2,212,998	2,000,695.92
	GN ARM	708,736	419,760.71
	GN FLOATER	474,564	151,740.94
	FHR		0.00
INTEREST			12,913.02
CASH			1,084,953.05
			8,920,203.12

Transfer:

Trinity Capital Investors



STATE OF MISSISSIPPI
GOVERNOR PHIL BRYANT

MISSISSIPPI TORT CLAIMS BOARD
J. KIRKHAM POVALL, CHAIRMAN

MIKE CHANEY, Commissioner
Insurance Department
TRUDY FISHER, Executive Director
Department of Environmental Quality
LYNN FITCH, Treasurer
Department of Treasury

JIM HOOD, Attorney General
Office of Attorney General
ALBERT SANTA CRUZ, Commissioner
Department of Public Safety
KEVIN J. UPCHURCH, Executive Director
Department of Finance and Administration

MEMORANDUM

TO: MS Tort Claims Board
FROM: Steve Milner
DATE: January 12, 2012
RE: Loss Control Report

Since the last Board meeting, loss control services for the Tort Claims Board and the State Agencies Self-Insured Workers' Compensation Trust include:

- 1 Ride-along
- 2 Defensive Driving Classes
- 8 State Property/Leased Property Inspections
- 9 Ergonomic Assessments
- 2 Accident Investigations
- 3 Highway Construction Safety Assessments
- 1 Safety Consultation
- 1 Emergency Response
- 3 Safety Meetings



STATE OF MISSISSIPPI
GOVERNOR PHIL BRYANT

MISSISSIPPI TORT CLAIMS BOARD

J. KIRKHAM POVALL, CHAIRMAN

MIKE CHANEY, Commissioner
Insurance Department
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Department of Environmental Quality
LYNN FITCH, Treasurer
Department of Treasury

JIM HOOD, Attorney General
Office of Attorney General
ALBERT SANTA CRUZ, Commissioner
Department of Public Safety
KEVIN J. UPCHURCH, Executive Director
Department of Finance and Administration

MEMORANDUM

TO: MS Tort Claims Board
FROM: Lea Ann McElroy
DATE: January 12, 2012
RE: Political Subdivisions – Certificates of Coverage

RECOMMENDATION: Staff recommends approval of
47 political subdivisions shown on attached list

Attachment

MISSISSIPPI TORT CLAIMS BOARD

THURSDAY, JANUARY 12, 2012

Political Subdivisions Recommended for Renewal of Certificates of Coverage

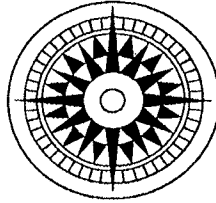
AAA Ambulance Service
Arkabutla Drainage District of Tate County
Bayside Fire District
Birmingham Ridge Volunteer Fire Department
CEDAR HILL VFD
Clarke County Board of Supervisors
Coahoma Drainage District
Copiah County Soil & Water Conservation District
Corinth-Alcorn County Joint Airport Board
East Covington VFD
Forrest County Soil & Water Conservation District
Fulton City Clerk
Greenwood-Leflore Library
Hopson Drainage District #1
Hopson Drainage District #2
Hopson Main Drainage District
Houston-Palestine Water Association, Inc.
Indian Bayou Master Water Management District
Issaquena County Board of Supervisors
Itawamba Community College & AHS
Jackson County Board of Supervisors
Jackson County Port Authority
Jackson-George Regional Library
Kiln Water Department
Lafayette County Soil & Water Conservation District
Lead Bayou Drainage District
Lee County Board of Supervisors
Love Volunteer Fire Department
Lowndes County Soil & Water Conservation District
Macon City Clerk
Marion County Economic Development District
Mid-Mississippi Development District

Mid-Mississippi Regional Library System
Panola County Soil & Water Conservation District
Pearl River Community College
Pearl River County Board of Supervisors
Rolling Fork Drainage District
Sevier Lake Drainage District
Simpson County Board of Supervisors
Smith County Soil & Water Conservation District
Tallahatchie County Soil & Water Conservation District
Tunica County Soil & Water Conservation District
Walthall County Soil & Water Conservation District
Warren County Board of Supervisors
Waynesboro City Clerk
Winston County Board of Supervisors
Winston County Soil & Water Conservation District

TOTAL PRINTED: 47

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ATTORNEYS AT LAW

January 3, 2012

Mississippi Tort Claims Board
Attn: Bruce Donaldson, Claims Manager
Post Office Box 267
Jackson, MS 39205

**Re: Doris Kenny Ware v. Mississippi Department of Transportation;
Hinds County Civil Action No. 251-11-108**

Dear Sirs:

Please accept this correspondence as our settlement recommendation for the above captioned matter.

This case arises from a motor vehicle accident that occurred on February 3, 2010, on I-55 N, just north of the Hinds-Copiah County line, between an MDOT vehicle and an 18 wheel vehicle being operated by the Claimant, Mr. Ware. According to Ware, he was traveling north on I-55, at approximately 65 mph, when he came up behind the MDOT truck, traveling approximately 25 mph, in the left lane. Ware alleges that the MDOT truck then began to merge into the right lane, striking his vehicle and eventually forcing him onto the right shoulder, where his vehicle overturned. Ware was removed from the scene by ambulance and spent approximately one week in the hospital following the wreck. He also had to undergo a surgery to repair a broken nose and a neck surgery due to the accident. Ware also attempted to claim that he suffered a heart attack and had to undergo heart surgery as a result of this wreck, but said claim has not been supported by the Plaintiff's cardiologist.

Ware's story is mostly corroborated by an independent witness/motorist, Chris Cathy, who was traveling south on I-55 at the time of the accident. Ware's version of events was also the version that was presented in the accident report completed by investigating MHP Trooper, Sylvester Houston. Trooper Houston also listed contributory circumstances of "avoidance and failure to keep proper lane, failure to yield right of way and improper lane change" as to the MDOT vehicle. When we interviewed him, it was Officer Houston's opinion, based upon the statements of the drivers and the witness, and based upon his observations, that the MDOT truck "merged on top" of Ware's vehicle.

According to the MDOT employees who were in the truck, they were filling potholes on the Hinds portion of I-55, and had just completed a turn around at the Copiah County line to head back North. The MDOT "pothole" truck was driven by Barry Crane. Crane alleged that they were traveling North approximately 25-35 mph when Ware's vehicle struck them in the back right corner. He stated that he really does not know what happened, as he never even saw Ware's truck until it hit him (there is a hill which obstructed Crane's view of traffic south of him, and he could not see traffic until it topped the hill). Crane stated that the reason they came over into the right lane, was because their vehicle became stuck on Ware's vehicle, after the initial collision, and that Ware's vehicle pulled them over into the right lane.

We have also interviewed Lonnie Sharkey and Allen Dorsey, who were employees/passengers in the MDOT truck with Crane. Their versions of events appear to mostly corroborate Crane's. Through these interviews, we also learned that Crane's truck was being followed by an MDOT "crash" or "sign" truck, which has the big lighted arrow that protects the MDOT trucks and employees, while they are working, and three other vehicles. Upon investigation, we determined that the drivers of two of the following trucks were stopped back on I-55 South, loading a deer carcass; so they saw nothing. The driver of the other following vehicle has died since the subject accident, but it is our understanding that he also saw nothing of the wreck.

We were able to interview the driver of the "crash" truck, Mr. Karl Brown, who was following Crane's pothole truck. According to Mr. Brown, he was 50 -100 yards behind the pothole truck. He saw the pothole truck cross the median and pull into the northbound left lane. He then began to look south so that he could make his entrance onto I-55; and because of that, he claims that he did not see anything of the accident or what caused it.

So, we are faced with a case where, unfortunately, the only disinterested or uninvolved witness to the accident was the southbound motorist/witness, Christopher Cathy, who, while rather vague as to exactly what occurred, corroborates the Claimant's story of what happened. We also know that the investigating trooper, Sylvester Houston, while not a witness, was of the opinion that the MDOT vehicle was the cause of the accident, and essentially states same in his traffic report.

Therefore, it is, essentially, the word of the MDOT employees against that of the Claimant and the witness and investigating trooper. While we believe that this situation would not be indefensible, were this case to go to trial, we do believe that persuading the Court that MDOT's version of events is more believable, would be "a long row to hoe". Moreover, there are several other concerns regarding this case.

We know that the independent witness and the MHP Trooper, based upon what they saw and heard, believe that the accident occurred as reported by the Claimant, Mr. Ware. What concerns us is that when we asked Mr. Brown to tell us how these trucks typically enter a high speed interstate, when they are making these turnarounds across the I-55 median. He told us that their objective is to get to the right lane/right shoulder, as quickly as possible. However, when the MDOT employees in the pothole truck, made their statements, they said that they intended to stay in the left lane, which does not seem to make sense, since the MDOT truck would need to get into the right lane because it was going much slower than the oncoming traffic and would need to have the crash truck and the other trucks catch up to it.

Brown told us that, typically, the MDOT truck will wait until there is a sufficient opening in the traffic to enter and proceed into the right lane; however, in this case, we know that there was a hill in the northbound lanes that obscured the driver's ability to see the oncoming northbound traffic. Based on this information, it occurred to us that, if you have an 18 wheel truck traveling 70-80 mph, obscured at the time the decision to go is made, and then topping that hill right about the time the MDOT truck is entering the highway, and attempting to get all the way over into the right lane, the MDOT truck would believe that the right lane was clear, when it really was not.

It concerns us that, if you step back, and look at this situation objectively, it makes much more sense that the MDOT truck was scrambling to get across two lanes of traffic, going slower than the oncoming traffic, and that they did not see the oncoming 18 wheeler, because it was topping the hill behind them at the same time they were entering the roadway and attempting to merge into the right lane, causing the MDOT truck to contact the 18 wheeler and forcing it off the road in the process of trying to get to the right lane/shoulder, which seems (according to Karl Brown) to be the normal procedure in that

situation. Because of these concerns and because of the lack of witnesses to corroborate MDOT's version of events, it is our recommendation that this case be settled.

According to Ware's medical records, he was transported from the accident site by ambulance and was taken to the CMMC ER, where he was evaluated for injuries. Based upon his condition, it was determined that he needed to be hospitalized. He stayed in the hospital for approximately two (2) days. During that time, it was discovered that Ware suffered a nasal fracture as a result of the MVA. Mr. Ware was discharged home with orders for physical and occupational therapy.

Later, on February 22, 2010, Mr. Ware was evaluated by Dr. Stephen Lee, who recommended a closed fracture reduction on Mr. Ware's nose. Ware underwent surgery (closed reduction requiring anesthesia) for a fractured nasal septum, at the Mississippi Surgical Center, on February 23, 2010. Dr. Lee noted that Ware's nasal fracture was sustained in the subject MVA, stating, "he has no previous treatment for this nasal fracture...Mr. Ware is noted to have a deflection of the nasal dorsum to the left."

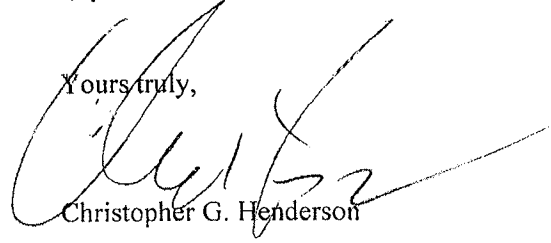
On February 22, 2010, Ware was also seen by neurosurgeon, Dr. Elio DeMeira, for extensive pain and other symptoms related to a possible neck/back injury. Ware complained of numbness and tingling affecting his hands and some weakness affecting his right lower extremity, along with persistent pain in his neck and left side of his chest. Dr. DeMeira ordered MRIs and determined that Ware had a, "severe spinal canal stenosis at C5-C6 caused by a large disc herniation" as a result of the MVA and recommended surgical excision of the disc at C5-C6 with fusion and plating at that level.

Ware later underwent neck surgery at Baptist Hospital (Dr. DeMeira), on March 3, 2010, which consisted of disc surgery/fusion at C5-C6. According to the medical records, the surgeon's findings included, "patient had a soft fragment of disc herniated into the spinal canal, causing considerable pressure upon the Dural Sac". Also according to the medical records, while Ware did have a history of prior back surgery, he had no history of prior neck problems/complaints, until the subject MVA. The cervical surgery required approximately two (2) days of hospitalization, and extensive "at home" recovery and therapy. It is noted in the surgeon's follow-up notes that Mr. Ware's recovery was accompanied by significant pain and discomfort, mostly in his neck and arms, which is not unexpected.

In conducting some preliminary discovery while investigating this claim, the Claimant was able to provide us with proof of approximately \$91,000.00 in medical expenses, which we believe are directly attributable to the subject wreck. These expenses do not include any expenses related to Mr. Ware's heart attack/surgery, which the Plaintiff has admitted in settlement negotiations, cannot be corroborated by Ware's treating cardiologist. However, it must be considered that, if this case were to go to trial, there is nothing prohibiting the Plaintiff from obtaining a "hired gun" cardiologist to opine that Ware's heart condition is causally related to the accident. If the claimant were able to convince the Court that said expenses are related, then the Claimant's attributable medical expenses would increase significantly, as would MDOT's potential exposure. Therefore, at this time, it is our recommendation that the Board consider and approve the settlement of this matter, in the negotiated amount of \$225,000.00, at its next meeting.

Thank you for your attention hereto. Of course, should the Board have any questions or comments in regard to this settlement recommendation, please do not hesitate to contact me, at the Board's convenience.

Yours truly,

A handwritten signature in black ink, appearing to read 'Chris Henderson', with a long horizontal flourish extending to the right.

Christopher G. Henderson

CGH